

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NORTHERN PLAINS RESOURCE
COUNCIL, et al.,

Plaintiffs,
vs.

UNITED STATES ARMY CORPS OF
ENGINEERS, et al.,

Defendants.

TRANSCANADA KEYSTONE PIPELINE,
LP, et al.

Intervenor-Defendants.

Civil Action No. 4:19-cv-00044-
BMM

**DECLARATION OF GARY
SALSMAN**

1. My name is Gary Salsman and I am the Project Vice President, US Execution for the Keystone XL Pipeline at TC Energy. My business address is 700 Louisiana Street, Houston, Texas 77002.

2. In my role as Project Vice President, US Execution, I am responsible for the overall planning and construction of the Keystone XL Pipeline Project (“Keystone XL” or the “Project”) in the United States. My responsibilities for the Project include general oversight of all construction activities to bring the Project into operation.

3. I am offering this declaration in support of TC Energy's motion for a stay of the Court's April 15, 2020 order vacating Nationwide Permit 12 (NWP 12) and enjoining the U.S. Army Corps of Engineers from authorizing activity under NWP 12. The facts I provide are within my personal knowledge.

4. The Court's order and corresponding injunction threatens TC Energy's ability to execute its planned construction activities in 2020 because TC Energy intended to rely on NWP 12 to authorize pipeline construction in waters of the United States for which authorization is required under Section 404 of the Clean Water Act. On January 31, 2020, TC Energy submitted preconstruction notifications (PCNs) to the Army Corps to obtain verifications required under Nationwide Permit 12. It was TC Energy's expectation that the Army Corps would have issued a decision on the PCNs by early May 2020. Given the Court's order, however, the Army Corps has indicated that it will not issue new PCN verification letters. Without authorization from the Army Corps under Section 404 of the Clean Water Act, TC Energy cannot construct portions of Keystone XL that require dredge and fill activities in waters of the United States.

5. If TC Energy does not receive authorization from the Army Corps by early July, its construction plans will be significantly impacted. Currently, TC Energy is evaluating potential options that would be available to it in that circumstance, each of which have significant adverse consequences.

6. These options include: (i) delaying construction activities in which case it will not complete construction of pipeline spreads in Montana, South Dakota, or Nebraska in the manner it has planned for 2020; (ii) altering its construction plans in 2020 to avoid dredge and fill activities in waters of the United States, which is estimated to increase the construction costs at the impacted locations by over \$100 million (40% higher) and delay completion of the planned 2020 construction; or (iii) forego construction in 2020 altogether.

7. TC Energy had planned to enter construction contracts to obtain approximately 1,800 construction workers to construct the pipeline segments scheduled to be built in 2020. This workforce would consist of unionized workers. If that planned pipeline construction cannot be completed this year, some or all of those construction jobs may be lost along with significant investment and economic opportunities in the communities the pipeline traverses.

8. To date, TC Energy has invested approximately \$3.2 billion in developing the Keystone XL project, including \$2.3 billion that was subject to a previous write-down. Additionally, the Government of Alberta has agreed to invest up to \$1.06 billion towards construction in 2020, in addition to further investment by TC Energy. If TC Energy is unable to complete the construction planned for 2020, timely completion of the Project would be put at risk.

9. If TC Energy is unable to complete the construction planned for 2020, it could face a one-year delay in the anticipated in-service date. Such a delay in the construction schedule would impose very significant financial consequences on TC Energy.

a. TC Energy estimates that a one-year delay would result in lost earnings before interest, taxes, depreciation, and amortization (EBITDA) of approximately \$1.3 billion between 2023 and 2024, based on the minimum take-or-pay shipper commitment. Even if TC Energy earned these revenues back at the end of the current 20-year shipper contract terms, the net EBITDA loss would be approximately \$750 million, assuming an 8% discount rate. This loss results because the net-present value of lost revenue TC Energy could earn in 2023 and early 2024 would be worth more than revenue received in the following years.

10. Additionally, the Project supports hundreds of indirect jobs immediately at suppliers, manufacturers, and vendors at a time when many suppliers and vendors are already facing reductions in workforce due to current economic conditions. Further, in the first year of operations, TC Energy plans to spend approximately \$488 million in payments for services and wages (\$28 million), power utilities (\$272 million), and taxes to State, county and municipal governments (\$189 million) in the United States. The impact to customers could

be substantially higher than this amount due to crude oil discounts or shut-in of production. In the event of a one-year delay, these operating expenditures would be delayed. Moreover, a delay would have significant negative impacts to US refiners relying on this important supply source.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of April 2020.



Gary Salsman